

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
WALTER THOMSON dba
GREEN RIVER AUTO WRECKING,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 80-49

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$250 civil penalty for the alleged violation of sections 8.02(3) and 8.05(1) of Regulation I, came before the Pollution Control Hearings Board, Nat Washington, Chairman, and David Akana (presiding) at a formal hearing in Tacoma on July 28, 1980.

Respondent was represented by its attorney, Keith D. McGoffin; appellant Walter Thomson appeared pro se. Court reporter Sandra Coleman recorded the proceeding.

Having heard the testimony, having examined the exhibits and

1 having considered the contentions of the parties, the Board makes these

2 FINDINGS OF FACT

3 I

4 Appellant owns and operates Green River Auto Wrecking located at
5 25923 78th Avenue South in Kent, Washington.

6 II

7 Respondent is a regional air pollution control authority created
8 pursuant to RCW 70.94 having jurisdiction over the instant site.

9 III

10 On December 27, 1979, at about 4:20 p.m. in response to a
11 complaint of an outdoor fire, respondent's inspector visited
12 appellant's site in Kent. Upon arrival, the inspector saw a dark
13 smoke plume coming from a truck body in appellant's yard. Several
14 tires were observed burning in the fire. Appellant's manager
15 explained that a cutting torch used earlier in the day, may have been
16 the cause of the fire.

17 For the foregoing event appellant was issued a notice of violation
18 for the alleged violation of section 8.02(3) and 8.05(1) of Regulation
19 I from which followed a \$250 civil penalty and this appeal.

20 IV

21 The fire was caused accidentally by one of appellant's employees.
22 After the fire was burning, however, appellant allowed it to burn
23 since the fire did not threaten his property and he did not have the
24 means to extinguish it. Appellant has taken measures to avoid similar
25 happenings in the future.

26 FINAL FINDINGS OF FACT
27 CONCLUSION OF LAW AND ORDER

V

Appellant has no previous record of violations of Regulation I.

VI

Pursuant to RCW 43.21B.260, respondent has filed with this Board a certified copy of its Regulation I and amendments thereto which are noticed.

Section 8.02(3) makes it unlawful for any person to cause or allow an outdoor fire containing, among other things, petroleum products, rubber products, or any substance other than natural vegetation which normally emits dense smoke or obnoxious odors.

Section 8.05(1) makes it unlawful to cause or allow any outdoor fire other than landclearing or residential burning unless prior written approval has been issued by respondent.

Section 3.29 provides for a civil penalty of up to \$250 per day for each violation of Regulation I.

VII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

Appellant did not knowingly cause the instant fire, but once it was ignited, nothing was done by appellant to put it out. Appellant thereby "allowed" the fire to burn. Accordingly, appellant knowingly violated section 8.02(3) of Regulation I as alleged.

FINAL FINDINGS OF FACT
CONCLUSION OF LAW AND ORDER

1 II

2 Appellant had no apparent permission to conduct the instant
3 outdoor fire, nor would he be expected to have such permission for an
4 accidental fire. He nonetheless allowed the fire to burn after it was
5 started and possessed no permit to do so. Accordingly, appellant
6 violated section 8.05(1) as alleged.

7 III

8 The \$250 civil penalty should be affirmed. A portion of the
9 penalty should be suspended under the circumstances of this case,
10 however.

11 IV

12 Any Finding of Fact which should be deemed a Conclusion of Law is
13 hereby adopted as such.

14 From these Conclusions the Board enters this

15 ORDER

16 The \$250 civil penalty is affirmed; provided, however, that \$50 is
17 immediately payable and the remainder of the penalty, \$200, is
18 suspended on condition that appellant not violate respondent's
19 regulations for a period of six months from the date of this order.

20 DATED this 7th day of August, 1980.

21 POLLUTION CONTROL HEARINGS BOARD

22
23 
24 NAT W. WASHINGTON, Chairman

25 
26 DAVID AKANA, Member

27 FINAL FINDINGS OF FACT
CONCLUSION OF LAW AND ORDER